

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

JESSE DAILEY,

Plaintiff,

COMPLAINT

-against-

Index #:

CITY OF NEW YORK, CHRISTINE RODESCHIN,
AND REINER FEHRENBACH,

Defendants.

-----X

Plaintiff complaining of the defendants by his attorneys
Howard M. File, Esq., P.C, and Martin Rubenstein, Esq., of counsel,
alleges:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. At all times mentioned herein the defendant City of New York
was and is a municipal corporation duly organized and doing
business under and by virtue by laws of State of New York.

2. At all times mentioned herein Christine Rodeschin was a
police officer employed by the New York City Police Department and
thus by the City of New York.

3. At all times mentioned herein the actions and inactions of
Christine Rodeschin were performed as a New York City Police
Officer.

4. At all times mentioned herein the actions and inactions of Christine Rodeschin were performed under color of law.

5. At all times mentioned herein Reiner Fehrenbach was employed by the New York City Police Department and thus by the City of New York.

6. At all times mentioned herein the actions and inactions of Reiner Fehrenbach were performed as an employee of the New York City Police Department, upon information and belief a detective.

7. At all times mentioned herein the actions and inactions of Reiner Fehrenbach were carried out under color of law.

8. That the defendants objectively and subjectively violated the civil rights of the plaintiff.

9. That the City of New York, New York City Police Department, had policies and procedures which put in practice and followed violated the Civil Rights of plaintiff.

10. That the City of New York, New York City Police Department condoned all actions taken in this matter by defendants Christine Rodeschin and Reiner Fehrenbach.

11. That the defendants violated the Civil Rights of plaintiff guaranteed by New York City Ordinance, New York State Law and New York State Constitution, U.S. Law and U.S. Constitution.

12. That the defendants violated plaintiff's federal constitutional and statutory rights under color of law and caused injuries and damages to plaintiff and plaintiff, together with

other relief sought herein, seeks remedy herein pursuant to 42 USC §1983.

13. That the defendant City of New York, New York City Police Department should not have employed and retained Christine Rodeschin and Reiner Fehrenbach and was negligent in doing so, and doing so was a substantial cause of injury and damage to plaintiff.

14. That on April 20, 2016 a Notice of Claim was served upon the City of New York and more than thirty (30) days has elapsed and the City of New York has not settled or adjusted this claim.

AS AND FOR A FIRST CAUSE OF ACTION

15. On November 18, 2013 Christine Rodeschin accosted and harassed plaintiff Jesse Dailey.

16. In doing so the defendant, Christine Rodeschin acted under color of law.

17. That Christine Rodeschin failed to conform to proper and accepted police procedures.

18. That defendant Christine Rodeschin failed to exercise reasonable care under the circumstances and was negligent.

19. That the defendant Christine Rodeschin violated the Civil Rights of the plaintiff Jesse Dailey.

20. That the above conduct was carried out with malice, and/or with gross disregard of the rights of the plaintiff and was subjectively and objectively in violation of plaintiff's civil rights.

21. That as a substantial result thereof Jesse Dailey was caused to sustain injury and damages.

AS AND FOR A SECOND CAUSE OF ACTION

22. That plaintiff Jesse Dailey was taken into custody on or about November 20, 2013 at approximately 10:45-11:00 am in front of 302 13th Street, Brooklyn, New York.

23. That at said time and place defendant City of New York by and through its police officers, using drawn firearms, placed plaintiff in handcuffs, searched and forcibly removed plaintiff to a police precinct and detained plaintiff approximately 20-24 hours.

24. That in so doing the defendants were negligent, failed to conform to proper police procedures, and violated the Civil Rights of the plaintiff with malice and/or gross disregard of the rights of the plaintiff, Jesse Dailey.

25. That false statements made by Christine Rodeschin and Reiner Fehrenbach caused and contributed to the above which statements were negligent, violated proper police procedures, and violated the Civil Rights of the plaintiff and were done with malice and gross disregard of the truth and of the rights of the plaintiff.

26. As a substantial cause thereof Jesse Dailey was caused to sustain injury and damage.

AS AND FOR A THIRD CAUSE OF ACTION

27.Christine Rodeschin falsely claimed that the plaintiff Jesse Dailey committed an assault and battery upon her and further falsely claimed that plaintiff had inflicted personal injuries upon her, made sworn statements to that effect, signed false police reports to that effect, conspired and participated in maliciously prosecuting plaintiff Jesse Dailey knowing that the charges she had brought against him were false and gave false sworn testimony against plaintiff, which was false and was false to her knowledge.

28.That in doing so the defendant Christine Rodeschin was negligent and failed to conform to proper police procedures.

29.That in doing so the plaintiff Christine Rodeschin violated the Civil Rights of the plaintiff.

30.The the defendant Christine Rodeschin performed these acts out of malice and/or gross disregard of the truth and the Civil Rights of the plaintiff and violated the Civil Rights of the Plaintiff.

31.As a substantial result thereof plaintiff Jesse Dailey was caused to sustain injury and damages.

AS AND FOR A FOURTH CAUSE OF ACTION

32.That Defendant Reiner Fehrenbach signed false statements, signed false affidavits, testified falsely under oath, hid and concealed evidence, destroyed evidence, fabricated evidence, guided witnesses to identify the plaintiff by showing them photographs and

otherwise guiding them to identify the plaintiff Jesse Dailey conspired and participated in falsely arresting and in malicious prosecution of the plaintiff.

33. That the defendant Reiner Fehrenbach in the above actions was negligent in the above actions and violated proper police procedures.

34. That defendant Reiner Fehrenbach violated the Civil Rights of the plaintiff.

35. That said violation of Civil Rights was done maliciously and/or with gross disregard of the rights of the plaintiff.

36. As a substantial result thereof plaintiff Jesse Dailey sustained injury and damage.

AS AND FOR A FIFTH CAUSE OF ACTION

37. That the defendant City of New York, Christine Rodeschin and Reiner Fehrenbach obtained a search warrant using false and fraudulent means, which search warrant was carried out.

38. That in doing so the defendants violated proper police procedures and were negligent.

39. That in doing so the defendants violated the Civil Rights of the plaintiff.

40. That the violation of Civil Rights of the plaintiff on the part of the defendant was malicious and/or in gross disregard of the rights of the plaintiff.

41.As a substantial result thereof plaintiff Jesse Dailey was caused to sustain injury and damage.

AS AND FOR A SIXTH CAUSE OF ACTION

42.That the City of New York, Christine Rodeschin, and Reiner Fehrenbach used false, fraudulent and misleading means to obtain Grand Jury indictment.

43.City of New York, Christine Rodeschin and Reiner Fehrenbach participated in falsely arresting and maliciously prosecuting plaintiff Jesse Dailey for charges including sexual abuse in the first degree, forcible touching, sexual abuse in the second degree, endangering the welfare of a child (2 counts) allegedly perpetrated by plaintiff on or about September 20, 2013 at approximately 05:55 at 11 Water Street, between 5th and 6th Avenues, County of Kings, State of New York, and further participated in falsely arresting and maliciously prosecuting plaintiff for sexual abuse in the first degree and forcible touching and sexual abuse in the second degree, endangering the welfare of a child on November 11, 2013 at approximately 4:15 pm in front of 297 4th Street, County of Kings, State of New York and further maliciously prosecuting and falsely arresting the plaintiff on charges of assault in the first degree, second degree, third degree, obstructing government administration in the second degree, allegedly perpetrated by plaintiff on or about November 18, 2013 at approximately 3:40 pm on the northeast

corner of 5th Avenue and 9th Street, County of Kings, State of New York.

44. In the above the defendants were negligent and departed from proper and accepted police procedures.

45. That the defendants violated the Civil Rights of the plaintiff, Jesse Dailey and did so with malice and/or gross disregard of the Civil Rights of the Plaintiff.

46. That the defendants maliciously prosecuted the plaintiff.

47. That as a substantial result thereof Plaintiff Jesse Dailey was caused to sustain injury and damage.

AS AND FOR A SEVENTH CAUSE OF ACTION

48. That the City of New York, Christine Rodeschin and Reiner Fehrenbach maliciously prosecuted the plaintiff Jesse Dailey up to and inclusive of the date of his acquittal on or about January 25, 2016.

49. That the defendants acted out of malice and/or gross disregard of the Civil Rights of plaintiff.

50. That the defendants violated the Civil Rights of plaintiff Jesse Dailey and did so maliciously and/or with gross disregard of the Civil Rights of the plaintiff.

51. It was not objectively reasonable for the City of New York, Christine Rodeschin and/or Reiner Fehrenbach to believe that under existing law their arrest and prosecution of the plaintiff was lawful.

52. That as a substantial result thereof plaintiff Jesse Dailey was caused to sustain injury and damage.

AS AND FOR A EIGHTH CAUSE OF ACTION

53. The plaintiff Jesse Dailey was restricted and partially deprived of his liberty from November 20, 2013 when he was first detained, then being placed on bail, until on or about January 26, 2016 when he was acquitted on all charges.

54. That the above violated the Civil Rights of the plaintiff Jesse Dailey.

55. That the above was done negligently and was a departure from proper and accepted police procedure.

56. That the violations of the Civil Rights of the plaintiff were done with malicious and/or gross disregard of the rights of the plaintiff.

57. That as a substantial result of the above plaintiff Jesse Dailey was caused to sustain injury and damage.

AS AND FOR A NINTH CAUSE OF ACTION

58. That the defendant City of New York, Christine Rodeschin and Reiner Fehrenbach continually defamed the plaintiff Jesse Dailey up to and inclusive of January 25, 2016 by falsely and knowingly falsely publicizing that Plaintiff Jesse Dailey was guilty of the charges alleged which upon information and belief was believed by some people who saw the false statements of the City of New York, Christine Rodeschin and Reiner Fehrenbach which false

statements were made with malice, reckless disregard of truth and gross negligence.

59.The above constitutes defamation, liable and slander.

60.That the plaintiff sustained general, compensatory and special damages.

61.That the above constitutes violation of the civil rights of the plaintiff, was done under color of law, was done with malice or gross disregard of the truth, and of the rights of the plaintiff.

62.That as a substantial result, plaintiff Jesse Dailey was caused to sustain injury and damage.

AS AND FOR AN TENTH CAUSE OF ACTION

63.That the defendants took cell phone, lap top, and headphones from the plaintiff, which have not been returned to this date.

64.That defendants had no right to take, retain, and to refuse to return property of the plaintiff.

65.That said actions were done under color of law and continues to be done under color of law.

66.That said actions were and are being done with malice and gross disregard of the rights of the plaintiff.

67.That said actions were done negligently and in violation of proper police procedures.

68.That said actions violate the Civil Rights of plaintiff.

69. As a substantial result the plaintiff has sustained injury and damage including the value of the property and loss of use of the property.

WHEREFORE, the plaintiff demands damages against the Defendants City of New York, Christine Rodeschin and Reiner Fehrenbach for general compensatory and special damages, all in sums in excess of the jurisdictional limits of all lower courts, Plaintiff Jesse Dailey further demands the sum of One Hundred Thousand (\$100,000) Dollars paid by the plaintiff for investigation, related expenses, and legal fees for defense against false charges, to be paid by Christine Rodeschin and Reiner Fehrenbach and the City of New York.

Plaintiff demands reimbursement for lost property which was taken from the plaintiff and not returned including computer, cell phone and head phones and loss of use of such property. The value of said losses to be paid by defendants, Christine Rodeschin and Reiner Fehrenbach and the City of New York.

Plaintiff demands damages for mental pain and suffering, psychological pain and suffering, mental distress, loss of reputation, diminished reputation, loss of earnings capacity, expenses and special damages.

Plaintiff demands punitive damages for intentional, reckless, gross negligence, and malicious conduct and for violation of his civil rights.

Plaintiff demands reimbursement of the cost of bail bond in the approximate sum of Five Thousand (\$5,000) Dollars which is not refundable.

Plaintiff demands damages as a victim of harassment, assault and battery, false arrest, malicious prosecution, deprivation of liberty, deprivation of civil rights, mental and emotional pain and suffering, all conducted under color of law, and all performed with malice and with gross disregard of the rights of the plaintiff.

WHEREFORE, Plaintiff demands general, compensatory and special damages together with interest, costs and disbursements, and legal fees to be awarded for violation of civil rights, and punitive damages all in sums in excess of the jurisdictional limits of all lower courts on the First Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Second Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Third Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Fourth Cause of Action against CITY OF NEW YORK, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive

damages, legal fees, interest, costs and disbursements; on the Fifth Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Sixth Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Seventh Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Eighth Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Ninth Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements; on the Tenth Cause of Action against CITY OF NEW YORK, CHRISTINE RODESCHIN, AND REINER FEHRENBACH, for general, compensatory and special damages, punitive damages, legal fees, interest, costs and disbursements.

Dated: Staten Island, New York
August 18, 2016.

A handwritten signature in cursive script, reading "Martin Rubenstein". The signature is written in dark ink and is positioned above the printed name.

Martin Rubenstein, Esq.
Howard M. File, Esq., P.C.
Attorneys for Plaintiff
260 Christopher Lane
Suite 102
Staten Island, New York 10314
718-494-8800

ATTORNEY'S VERIFICATION

I, MARTIN RUBENSTEIN, the attorney of record for the plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; that the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The reason that this verification is made by me and not by the plaintiff, is that plaintiff is outside the county of Richmond. The grounds of my belief as to all matters not stated upon my knowledge are from investigations made on behalf of said plaintiff.

I hereby affirm the foregoing statements are true, under the penalties of perjury.


Martin Rubenstein

Affirmed the 18th day of August, 2016

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JESSE DAILEY,

Plaintiff(s),

-against-

CITY OF NEW YORK, CHRISTINE RODESCHIN AND
REINER FEHRENBACH,

Defendant(s).

AMENDED ANSWER

Index #: 514478/2016

Law Dept. #: 2016-033669

Defendants THE CITY OF NEW YORK, CHRISTINE RODESCHIN and REINER FEHRENBACH by ZACHARY W. CARTER, Corporation Counsel, answering the complaint, allege upon information and belief:

1. Deny each allegation set forth in paragraphs 8-13, 15, 17-21, 23-69, 1ST UNNUMBERED FOLLOWING NUMBER 69, 2ND UNNUMBERED, 3RD UNNUMBERED, 4TH UNNUMBERED, 5TH UNNUMBERED, 6TH UNNUMBERED, 7TH UNNUMBERED, inclusive.

2. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations set forth in paragraphs 22, inclusive.

3. Deny the allegations set forth in paragraphs 14, inclusive, except that a notice of a claim was presented, that more than thirty days have elapsed without adjustment thereof.

4. Deny each allegation set forth in paragraphs 1, inclusive, except that the City of New York is a municipal corporation which maintains a Police Department pursuant to law.

5. Deny each allegation set forth in paragraphs 2-7, 16, inclusive, except that CHRISTINE RODESCHIN and REINER FEHRENBACH were duly appointed and acting in the scope of their employment.

AFFIRMATIVE DEFENSES

6. Plaintiff's culpable conduct caused or contributed, in whole or in part, to his/her/their injuries and or damages.

7. At all times mentioned in the complaint, plaintiffs knew or should have known in the exercise of due/reasonable care of the risks and dangers incident to engaging in the activity alleged. Plaintiff voluntarily performed and engaged in the alleged activity and assumed the risk of the injuries and/or damages claimed. Plaintiff failed to use all required, proper, appropriate and reasonable safety devices and/or equipment and failed to take all proper, appropriate and reasonable steps to assure his safety. Plaintiff's primary assumption of risk solely caused his injuries and/or damage and defendants owed no duty to the plaintiff with respect to the risk assumed. Plaintiff's express assumption of risk solely caused his injuries and/or damage and defendants owed no duty to the plaintiff with respect to the risk assumed. Plaintiff's implied assumption of risk caused or contributed, in whole or in part to his/her/their injuries.

8. Defendants are immune from suit for their exercise of discretion in the performance of a governmental function and/or their exercise of professional judgment.

9. The amounts recoverable by plaintiff are subject to limitation pursuant to Section 1601 of the Civil Practice Law and Rules, by reason of the culpable conduct of other persons who are, or with reasonable diligence could have been made party defendants to this action, or pursuant to Section 15-108 of the General Obligations Law, by reason of a prior settlement between plaintiff and said persons or pursuant to Section 4545 of the Civil Practice

Law and Rules are subject to reduction by collateral sources received by plaintiff, or by reason of the fact that punitive damages are not recoverable against municipal defendants.

10. If plaintiff demonstrates that the acts complained of were undertaken in the scope of the actors employment, then such acts as may have been committed by law enforcement officers in the employ of the City of New York were justified as being reasonably necessary, and were committed in good faith without malice and with probable cause, and in the exercise of professional judgment or the performance of discretionary functions for which defendants are qualifiedly privileged under the laws of this State and of the United States. Individual defendants represented by the Office of the Corporation Counsel, including, but not limited to, CHRISTINE RODESCHIN AND REINER FEHRENBACH, did not violate any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

11. Such statements as were made concerning the plaintiff were privileged as being true, or fair comment upon matters of opinion, and were made in the good faith belief in their truth without malice to person having a like duty or interest therein.

12. The action on behalf of the plaintiff is barred in whole or in part by reason of the fact that it was not commenced within the time provided by the Statute of Limitations.

13. Plaintiff's complaint fails to consecutively number allegations as required by section 3014 of the CPLR.

14. Plaintiff's complaint fails to comply with section 3017(c) of the CPLR.

WHEREFORE, defendants demand judgment dismissing the complaint and all cross-claims against them, or, in the event that they are adjudged liable, granting judgment over, or apportioning such liability in accordance with their equitable shares of responsibility, and awarding the costs of this action, together with such other and further relief as to the court may seem just.

ZACHARY W. CARTER
Corporation Counsel
100 Church Street
New York, New York 10007

VERIFICATION

STEPHANIE M. REVILLA / RYAN MAHONEY an attorney admitted to practice before the Courts of the State of New York, affirms pursuant to Rule 2106 of the Civil Practice Laws and Rules: affirmant is an employee of the Office of the Corporation Counsel; that affirmant has read the foregoing answer, cross-claim(s) and counterclaim(s), if any, and knows the contents thereof; that the same are true to affirmant's own knowledge, except as to the matters alleged upon information and belief, which affirmant believes to be true based upon the files, books and records maintained by The City of New York, New York City Health and Hospitals Corporation or the New York City Board/Department of Education, and the officers or agents thereof; and further swears that on this date he/she served said answer, cross-claim(s) and counterclaim(s), if any, together with the accompanying combined demands for particulars and discovery upon:

HOWARD M. FILE, ESQ., P.C.
the attorney(s) for Plaintiff(s)
at 260 CHRISTOPHER LN. STE. 102
STATEN ISLAND, NY 10314

by mailing a copy to the person at the address designated by him or her for that purpose by depositing the same in a first class, postpaid, properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: New York, New York
May 1, 2017



RYAN MAHONEY

Index #: 514478/2016

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JESSE DAILEY,

Plaintiff(s),

- against -

CITY OF NEW YORK, CHRISTINE RODESCHIN AND REINER
FEHRENBACH,

Defendant(s).

AMENDED ANSWER

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City File No. 2016-033669